APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Submitted: May 24, 1974
Decided: June 4, 1974.

Before
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. JOHN PAUL STEVENS, *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 74-1086 *vs.*

EUGENE JOHN IZZI,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Indiana,
Hammond Division.
No. 73 H CR 88
ALLEN SHARP, *Judge.*

ORDER

Defendant Eugene Izzi was indicted, tried by a jury and convicted of receiving, possessing and transporting a .44 magnum revolver in interstate commerce in violation of 18 U.S.C. §1202(a)(i).[1] Defendant has appealed and we affirm.

---

[1] 18 U.S.C. App. §1202 (a) (i)

Receipt, Possession, or Transportation of Firearms—Persons liable; Penalties for violation.

(a) Any person who—

(i) has been convicted by a court of the United States or of a state or any political subdivision thereof of a felony, and who receives, possesses or transports in commerce or affecting commerce after the date of enactment of this act, any firearms shall be fined not more than $10,000 or in prison for not more than two years or both.

On February 22, 1972, two Hammond, Indiana policemen responded to a radio dispatch concerning a disturbance at a nearby hotel. As the officers approached the hotel they overheard a group of men conversing in a loud manner. The defendant who was among the group announced to his companions that he had a .44 caliber magnum revolver. After hearing this statement, the police arrested defendant on charges of illegal possession of a firearm. The revolver on defendant's person was found to contain three live rounds and two spent cartridges. Two days after his arrest, defendant was found guilty of illegal possession of a firearm in a city court. Subsequently, defendant was interviewed by a federal agent and explained that he had purchased the gun from an unidentified individual on the street. He explained that he was showing his new purchase when apprehended by the police. The gun was later determined to have been purchased in Atlanta, Georgia by one Billy Clanton on February 15, 1972. Defendant's indictment, conviction and this appeal followed.

Defendant contends that the government failed to prove a *prima facie* case. More precisely, defendant asserts that this was a wholly intrastate transaction and that no nexus between defendant's possession of the firearm and interstate commerce was proven. In so contending, defendant places substantial reliance on *United States* v. *Bass*, 404 U.S. 336 (1971). Additionally, defendant contends that the element of knowledge was never proven.

Having reviewed the record and taking the evidence, as we must, in a light most favorable to the government, we find that the government sustained its burden of proof under 18 U.S.C. §1202(a)(i) appendix. Moreover, we find defendant's reliance on *Bass* to be misplaced. The *Bass* case is distinguishable from the one before us in that the

indictment there did not allege nor did the government prove any interstate commerce. In so holding, the Supreme Court noted that the receipt offense is much broader in reach than the possession offense and that the government may meet its burden by demonstrating that the firearm received had previously traveled in interstate commerce. This court has decided that the commerce requirement of the receipt offense of 18 U.S.C. §1202(a)(1) is satisfied by showing that the firearm received by a convicted felon has previously been transported in interstate commerce. *United States* v. *Walker,* Slip Opinion No. 73-1246 (7th Cir. November 28, 1973). In *United States* v. *Gianonni,* 472 F.2d 136 (9th Cir. 1973), the Ninth Circuit held that the interstate commerce nexus of at least thirteen years prior to the robbery in which defendant obtained the firearm was sufficient to justify the assertion of federal jurisdiction over the offense of receiving a firearm by a convicted felon.

We see no merit in defendant's contention that the government must show knowledge of the interstate movement of the firearm. Conspicuous by its absence are cases cited in support of that proposition. In *United States* v. *Gianonni,* it is unlikely that the defendant had knowledge of the previous movement of the firearm. The interstate movement of the firearm is simply a jurisdictional act and the government need not prove knowledge of such jurisdictional facts. *United States* v. *Allegretti,* 340 F.2d 243 (7th Cir. 1964).

The defendant next contends that the district court erred in giving the two following supplemental instructions:

> No. 8—The Government may meet its burden of proving a connection between Commerce and the receipt or possession of a firearm by a convicted felon if it is

demonstrated that the firearm received or possessed by a convicted felon had previously traveled in Interstate Commerce.

No. 10—It is not necessary that the Government prove that the Defendant knew of or participated in the alleged Interstate Commerce of the firearm.

We see no merit in defendant's contention and for the reasons discussed above find that the instructions were a correct statement of the law. Accordingly, the district court cannot be said to have erred by instructing the jury as to the correct nature of the law. An instruction similar to the first supplemental instruction cited above was upheld in *United States* v. *Mullins*, 476 F.2d 664 (4th Cir. 1973).

Finally, defendant contends that his conviction for possession of a firearm in a city court barred the federal trial for the greater offense. We note at the outset that the record is void of any evidence that this issue was raised below. Assuming, *arguendo*, that the issue was raised below and is properly before this court, we find it to be without merit. The Supreme Court has held that a federal prosecution is not barred by a prior state prosecution. *Abbate* v. *United States*, 359 U.S. 187 (1959).

For the reasons stated above, the judgment of the district court is affirmed.

APPENDIX B

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
July 8, 1974

Before
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. JOHN PAUL STEVENS, *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 74-1086 *vs.*

EUGENE JOHN IZZI,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana,
Hammond Division.
(73 H CR 88)

On consideration of the petition for rehearing and suggestion that it be reheard *en banc* filed in the above-entitled cause, no Judge in active service having requested a vote thereon, nor any Judge having voted to grant the suggestion, and all of the members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for a rehearing in the above-entitled cause be, and the same is hereby, DENIED.